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28 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROCK FIT, LLC, a Delaware limited liability company,

Plaintiff,

vs.

J.C. PENNEY CORPORATION, INC.,
a Delaware corporation, and
DOES 1-5, inclusive,

Defendant.

And Related Counterclaims

Case No. CV 11-6377 SVW (Ex)

Assigned to The Honorable
Stephen V. Wilson

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Rock Fit, LLC and J.C. Penney Corporation, Inc. assert that they may possess confidential information in the form of trade secrets or other confidential business, personal and/or technical information related to the subject matter of this

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1 litigation. The parties recognize that it may be necessary to disclose certain of the
2 asserted confidential information during the course of this litigation. As a result,
3 the parties desire limiting disclosure and preventing use of such information for
4 purposes other than the prosecution and defense of this action. In addition, the
5 parties contemplate that non-parties may produce confidential information.
6 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties hereby
7 stipulate and agree to the request for, and entry of, the following Protective Order
8 (hereinafter, "Order").

9 **1. DEFINITIONS.**

10 a. ***"Designated Material"*** shall mean any Discovery Material designated
11 by a Producing Party as CONFIDENTIAL INFORMATION or ATTORNEYS'
12 EYES ONLY INFORMATION, which comprises or contains information that the
13 Producing Party claims in good faith to constitute or relate to trade secrets under
14 applicable law, or confidential and proprietary information, such as, without
15 limitation, (i) research and development information (including, for example,
16 market and demographic research, and product and advertising development), (ii)
17 commercial information (including, for example, business plans, business
18 strategies, negotiations, and license agreements), (iii) financial information
19 (including, for example, budgeting, accounting, costs, sales figures and advertising
20 expenditures), (iv) business relationship information (including, for example,
21 information pertaining to potential and/or existing customers, competitors,
22 suppliers, distributors, affiliates, subsidiaries, and parents), (v) personnel
23 information (including, for example, compensation, evaluations and other
24 employment information), and (vi) patent prosecution information (including, for
25 example, present or future patent applications).

26 b. ***"Discovery Material"*** shall mean any Document (as defined below),
27 material, item, testimony, or thing filed with or presented to the Court or produced,
28 served, or generated during the discovery process, including, for example, exhibits,

1 answers to interrogatories, responses to requests for admissions, responses to
2 requests for production, subpoenas, declarations, affidavits, and deposition
3 testimony or transcripts, and all copies, extracts, summaries, compilations,
4 designations, and portions thereof.

5 c. ***“Document”*** shall mean every means of recording any form of
6 communication or representation upon any tangible thing, including letters, words,
7 pictures, sounds, or symbols, or combinations thereof, whether recorded by
8 handwriting, printing, photostatic or photographic means, magnetic impulse, tape,
9 computer disk, CD-ROM, or any other form of data storage, data compilation, or
10 mechanical or electronic recording, and all other tangible things which come
11 within the meaning of “writings” or “recordings” contained in Rule 1001 of the
12 Federal Rules of Evidence, or within the meaning of “document” or “tangible
13 thing” contained in Rule 34 of the Federal Rules of Civil Procedure.

14 d. ***“Producing Party”*** shall mean any party to this action or any third
15 party, including its counsel, retained experts, directors, officers, employees, or
16 agents, who produces any Discovery Material for this action, or one who
17 designates any Discovery Material produced by another party or third party.

18 e. ***“Receiving Party”*** shall mean any party to this action, including its
19 counsel, retained experts, directors, officers, employees, or agents, who receives
20 any Discovery Material.

21 **2. CATEGORIES OF DESIGNATED MATERIAL.**

22 a. ***Categories.*** Any Producing Party or party may mark Designated
23 Material as: (a) “CONFIDENTIAL INFORMATION”; or (ii) “ATTORNEYS’
24 EYES ONLY INFORMATION,” if the Producing Party claims in good faith that
25 the Designated Material is of such an extremely sensitive nature that the disclosure
26 of such Designated Material to a Receiving Party would result in competitive or
27 other business injury to it. The parties agree to not use the designation
28 “ATTORNEYS’ EYES ONLY INFORMATION” for purposes of harassing the

1 Receiving Party or for purposes of unnecessarily restricting the Receiving Party's
2 access to information concerning the lawsuit.

3 **b. Scope.** The scope of this Order shall be understood to encompass not
4 only Designated Material which is expressly designated as CONFIDENTIAL
5 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION, but also any
6 information copied therefrom, and all copies, excerpts, and summaries thereof, as
7 well as testimony and oral conversations which reveal that information.

8 **c. Additional Categories.** The parties may agree to add additional
9 categories of Designated Material (in addition to CONFIDENTIAL
10 INFORMATION and ATTORNEYS' EYES ONLY INFORMATION) from time
11 to time as necessary. If the parties cannot resolve the issue of whether this Order
12 should be amended to include the proposed new category of Designated Material,
13 the dispute may be submitted to the Court by motion or otherwise. Disclosure of
14 the Discovery Material, however, shall still be made, but with the highest level of
15 confidentiality available under this Order, pending resolution of the objection by
16 the parties or the Court, as the case may be.

17 **3. PROCEDURE FOR MARKING DESIGNATED MATERIAL.**

18 Marking Designated Material as CONFIDENTIAL INFORMATION or
19 ATTORNEYS' EYES ONLY INFORMATION shall be made by the Producing
20 Party in the following manner:

21 **a. Production.** In the case of documents or any other tangible thing
22 produced, designation shall be made by placing the legend "CONFIDENTIAL
23 INFORMATION" or "ATTORNEYS' EYES ONLY INFORMATION" on each
24 page of the document, and in case of a tangible thing, on the cover, the packing or
25 in any other prominent place on the subject tangible thing, prior to production of
26 the document or tangible thing;

27 **b. Inspection.** In producing original files and records for inspection, no
28 marking need be made by the Producing Party in advance of the inspection. For

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1 the purposes of the inspection, all documents made available for inspection shall be
2 considered as marked "ATTORNEYS' EYES ONLY INFORMATION."
3 Thereafter, upon selection of specified documents for copying by the Receiving
4 Party, the Producing Party shall mark as "CONFIDENTIAL INFORMATION" or
5 "ATTORNEYS' EYES ONLY INFORMATION" the copies of such documents as
6 may contain confidential information at the time the copies are produced to the
7 Receiving Party; and

8 **c. Deposition Testimony.** In the case of deposition testimony,
9 transcripts or portions thereof, designation shall be made by the Producing Party
10 either (i) on the record during the deposition, in which case the portion of the
11 transcript of the designated testimony shall be bound in a separate volume and
12 marked "CONFIDENTIAL INFORMATION" or "ATTORNEYS' EYES ONLY
13 INFORMATION" by the reporter, as the Producing Party may direct, or (ii) by
14 captioned, written notice to the reporter and all counsel of record, given within
15 fourteen (14) calendar days after the reporter sends written notice to the deponent
16 or the deponent's counsel that the transcript is available for review, in which case
17 all counsel receiving such notice shall be responsible for marking the copies of the
18 designated transcript or portion thereof in their possession or control as directed by
19 the Producing Party or deponent. Pending expiration of the fourteen (14) calendar
20 days, all parties and, if applicable, any third party witnesses or attorneys, shall treat
21 the deposition transcript as if it had been designated "ATTORNEYS' EYES
22 ONLY INFORMATION." No person shall attend the designated portions of such
23 depositions, unless such person is an authorized recipient of Designated Material
24 under the terms of this Order.

25 **4. CONTESTING THE DESIGNATION.**

26 **a. No Wavier.** No party to this action shall be obligated to challenge the
27 propriety of any designation by any Producing Party, and a failure to do so shall
28

1 not constitute a waiver or in any way preclude a subsequent challenge in this or
2 any other action to the propriety of such designation.

3 **b. *Objection.*** Any party may contest a claim of confidentiality. Any
4 party objecting to the designation of any Discovery Material as Designated
5 Material, such as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES
6 ONLY INFORMATION, must give outside counsel of record for the Producing
7 Party written notice of its reasons for the objection. Failing resolution after service
8 of the written notice of its reasons for the objection, the party objecting may, on a
9 duly noticed motion, seek an order changing or removing the designation. In the
10 resolution of such matter, the burden of establishing confidentiality shall be on the
11 party who made the claim of confidentiality, i.e., the Producing Party, but
12 information designated as CONFIDENTIAL INFORMATION or ATTORNEYS'
13 EYES ONLY INFORMATION shall be deemed as such until the matter is
14 resolved.

15 **5. RESTRICTION ON DISCLOSURE AND USE.**

16 **a. *Confidentiality.*** Designated Material and the information derived
17 from such Designated Material (excluding information which is derived lawfully
18 from an independent source) shall be kept confidential and shall not be given,
19 shown, made available, discussed, or otherwise communicated in any manner,
20 either directly or indirectly, to any person not authorized to receive the information
21 under the terms of this Order.

22 **b. *Maintenance of Designated Material by the Receiving Party.***
23 Designated Material shall be maintained by the Receiving Party at a location and
24 under circumstances to ensure that access is limited to those persons entitled to
25 have access under this Order.

26 **c. *Maintenance of Designated Material by the Producing Party.*** A
27 Producing Party is free to do whatever it desires with its own Designated Material.
28

1 **6. ACCESS TO DESIGNATED MATERIAL.**

2 **a. Access to Material Designated “ATTORNEYS’ EYES ONLY**
3 **INFORMATION.”** Designated Material marked “ATTORNEYS’ EYES ONLY
4 INFORMATION” shall be available only to the following persons subject to the
5 terms of paragraph 7:

6 (i) Outside counsel of record to any party in connection with this
7 action, and the outside counsel’s partners, associates and employees;

8 (ii) Judges, Magistrate Judges, law clerks, and clerical personnel of
9 the Court before which this action is pending or qualified court reporters;

10 (iii) Approved consultants or experts, excluding employees, officers
11 or directors of a named party, retained by any of the parties or their counsel of
12 record to consult or testify in the case;

13 (iv) Authors or drafters, addressees, and those who received the
14 documents or information prior to the commencement of this action, or during this
15 action, only if obtained independent and outside of this action and not in violation
16 of this Order;

17 (v) Third party contractors and their employees involved in
18 document management or copying services for this litigation;

19 (vi) Graphics or design services retained by counsel for a party for
20 purposes of preparing demonstratives or other exhibits for deposition, trial, or other
21 court proceedings in this action;

22 (vii) Jury or trial consulting services retained by a party in this
23 action;

24 (viii) Persons who have been retained by a party to provide
25 translation or interpretation from one language to another; and

26 (ix) Mock jurors retained by a party in this action, excluding
27 individuals who are officers, directors, or employees of a named party, or owners
28 of any interest in a named party.

1 **b. Access to Material Designated “CONFIDENTIAL**
2 **INFORMATION.”** Designated Material marked “CONFIDENTIAL
3 INFORMATION” shall be available only to:

4 (i) Those persons who may have access to materials designated
5 “ATTORNEYS’ EYES ONLY INFORMATION” subject to the terms of
6 paragraph 7; and

7 (ii) For each party to this litigation, three employees subject to the
8 terms of paragraph 7. With respect to this subparagraph, the term “employee”
9 shall include current directors, officers and/or employees of the Receiving Party.

10 **7. CONDITIONS ON ACCESS TO DESIGNATED MATERIAL.**

11 **a. Consultants, Experts, and Approved Designees.** Prior to a Receiving
12 Party giving, showing, disclosing, making available or communicating Designated
13 Material to any expert or consultant under paragraph 6(a)(iii), the party shall:

14 (i) Serve a notice on the Producing Party, identifying the approved
15 designee, expert or consultant and, in the case of an expert or consultant, the
16 expert’s or consultant’s business address, business telephone numbers, present
17 employer and position (along with a job description), consulting activities and job
18 history for the past three years, and past or present relationship, if any, with the
19 Receiving Party. Furthermore, if available or reasonably obtainable, the most
20 recent curriculum vitae or resume of the expert or consultant shall be provided
21 under this section. If the most recent curriculum vitae or resume of the expert or
22 consultant provides the information required under this paragraph, then the
23 information need not be separately provided.

24 (ii) State in such notice the specific Designated Material proposed
25 to be disclosed. In the absence of such specific designation, the notice will be
26 construed as referring to all of the Designated Material of the Producing Party
27 subject to this Order. In the event a specific designation is made, only so much of
28 the Producing Party’s Designated Material as is specifically designated shall be

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disclosed to the intended recipient, unless and until such time as a further notice is given to the Producing Party in the manner set forth in this paragraph, specifying any additional Designated Material to be disclosed.

(iii) Include with such notice, a copy of the Acknowledgment of Protective Order, in the form shown in Exhibit A, which is attached hereto, signed by the expert or consultant and including all the information to be completed therein.

(iv) The Producing Party shall be entitled to object to such disclosure to the designee, expert or consultant within seven (7) calendar days after receipt of the Acknowledgment of Protective Order by stating specifically in writing the reasons why such designee, expert or consultant should not receive the Designated Material.

(v) The parties shall meet and confer within seven (7) calendar days after the Producing Party serves its objection, for the purpose of attempting to resolve the objection.

(vi) If the objection is not resolved by the parties, the Producing Party must file and serve a motion to prevent disclosure within ten calendar (10) days after such meet and confer, otherwise, the Producing Party shall be deemed to have withdrawn its objection.

(vii) In any motion before the Court, the Producing Party shall bear the burden of showing the need for confidentiality and the grounds for its objection. No disclosure of Designated Material shall be made to the proposed designee, expert or consultant until the parties resolve the matter, the objection is withdrawn, or the Court permits such disclosure.

(viii) The filing and pendency of objections shall not limit, delay, or defer any disclosures of Designated Material to persons as to whom no such objection has been made, nor shall it delay or defer any other pending discovery,

1 unless the level of confidentiality bears directly on the objecting party's ability to
2 conduct such discovery.

3 b. Authorization and Acknowledgment. Each person hereof (excluding
4 Judges, Magistrate Judges, law clerks, and clerical personnel of the Court before
5 which this action is pending or qualified court reporters) to whom Designated
6 Material is to be given, shown, disclosed, made available or communicated in any
7 way, shall first execute an Acknowledgment of Protective Order in the form shown
8 in **Exhibit A**, agreeing to be bound by the terms of this Order, acknowledging that
9 Designated Material is subject to this Order, that the person is authorized under
10 paragraphs 6(a)-(b) to receive Designated Material marked as CONFIDENTIAL
11 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION, that the
12 person has read this Order, that such person agrees to comply with, and be bound
13 by, this Order, and that such person is aware that contempt sanctions may be
14 entered for violation of this Order. Counsel to whom Designated Material is
15 produced shall keep in his or her files an original of each such executed
16 Acknowledgment of Protective Order until sixty (60) calendar days after the final
17 termination of this action. Upon final termination of this action and at the written
18 request of the Producing Party, all such executed agreements shall be provided to
19 outside counsel for the Producing Party.

20 **8. PROCEDURES FOR FILING PAPERS WITH DESIGNATED**
21 **MATERIAL.**

22 Designated Material may be included with, or referred to in, papers filed
23 with the Court where this case is now pending or in any other court only in
24 accordance with the following procedures:

25 a. ***Designated Material.*** The Designated Material must be filed pursuant
26 to L.R. 79-5.

27 b. ***Papers Including Designated Material.*** All papers filed with the
28 Court, including but not limited to pleadings and memoranda of law, which include

1 all or any portion of information set forth in Designated Material must be filed
2 under seal in accordance with the terms and procedures set forth in this Order,
3 including the procedures for filing materials set forth above in paragraph 8(a).
4 Counsel for the party filing papers with Designated Material shall be responsible
5 for designating all papers filed with the Court as Designated Material and marked
6 as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY
7 INFORMATION depending on the contents of the papers being filed. Such papers
8 shall be subject to the terms of this Order.

9 **9. REDACTED FILINGS OF PAPERS WITH DESIGNATED**
10 **MATERIAL.**

11 Redacted versions of papers with Designated Material filed under seal may
12 be filed with the Court in accordance with normal procedures and made publicly
13 available provided that:

14 a. All Designated Material set forth in the papers is deleted or obscured
15 and all Designated Material is removed as exhibits; and

16 b. Redacted versions of the papers are clearly marked "Public Version –
17 Confidential Material Omitted." Redacted versions of the papers also must clearly
18 identify each place where information or exhibits have been deleted.

19 **10. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS.**

20 If it becomes necessary for a Receiving Party's outside counsel to seek the
21 assistance of any person, other than those persons referred to in paragraph 6, and to
22 disclose Designated Material to such person to properly prepare this litigation for
23 trial, the following procedures shall be employed:

24 a. Outside counsel of the Receiving Party shall notify, in writing, outside
25 counsel for the Producing Party, stating therein the specific Designated Material to
26 be disclosed and the name, address and position of the person(s) to whom such
27 disclosure is to be made;

28

1 b. If no objection to such disclosure is made by outside counsel for the
2 Producing Party within ten (10) calendar days of such notification, outside counsel
3 for the Receiving Party shall be free to make such disclosure to the designated
4 person(s); provided, however, that outside counsel for the Receiving Party shall
5 serve upon outside counsel for the Producing Party, prior to disclosure, an
6 Acknowledgment of Protective Order in the form shown in **Exhibit A**, whereby
7 such person agrees to comply with and be bound by this Order. The
8 acknowledgment shall be retained by outside counsel for the Receiving Party, and
9 distributed upon final disposition of this action as set forth in paragraph 15 below.

10 c. If, within ten (10) calendar days, the outside counsel for the Producing
11 Party objects, in writing, to such disclosure, no disclosure shall be made, except by
12 order of the Court upon a regularly noticed motion brought by the Receiving Party.
13 Before filing such a motion, outside counsel for the Receiving Party shall meet and
14 confer with outside counsel for the Producing Party in a good faith effort to resolve
15 their differences.

16 d. Any party moving for such an order requesting disclosure shall
17 explain why the requested disclosure is appropriate, but the Producing Party shall
18 bear the burden of justifying the confidentiality designation and explaining the
19 harm that would result from the requested disclosure.

20 **11. UNINTENTIONAL FAILURE TO DESIGNATE.**

21 If, through inadvertence, a Producing Party provides any Designated
22 Material pursuant to this litigation without designating and marking the Designated
23 Material as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY
24 INFORMATION, the Producing Party may subsequently inform the Receiving
25 Party of the confidential nature of the disclosed Designated Material, and the
26 Receiving Party shall treat the disclosed Designated Material as CONFIDENTIAL
27 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION upon receipt
28 of written notice from the Producing Party. Disclosure of such Designated

1 Material to persons not authorized to receive that material prior to receipt of the
2 confidentiality designation shall not be deemed a violation of this Order.
3 However, in the event the material has been distributed in a manner inconsistent
4 with the categorical designation, the Receiving Party will take the steps necessary
5 to conform distribution to the categorical designation, *i.e.*, by retrieving all copies
6 of the Designated Material, or notes or extracts thereof, in the possession of the
7 persons not authorized under this Order to possess such Designated Material and
8 advising the person to whom disclosure was made that the material is confidential
9 and should be treated as provided in the Order.

10 **12. UNINTENTIONAL DISCLOSURE OF PRIVILEGED**
11 **INFORMATION.**

12 Counsel shall exert their best efforts to identify documents or material
13 protected by the attorney-client privilege or the work-product doctrine prior to the
14 disclosure of any such documents or material. If, however, a party unintentionally
15 discloses documents or material that is privileged or otherwise immune from
16 discovery, the party shall, within seven (7) calendar days upon discovery of the
17 disclosure, so advise the Receiving Party in writing, request the documents or
18 material be returned, and attach a privilege log with an entry pertaining to the
19 documents or material that is privileged or otherwise immune from discovery. If
20 that request is made and the privilege log provided, no party to this action shall
21 thereafter assert that the disclosure waived any privilege or immunity. It is further
22 agreed that the Receiving Party will return or destroy the inadvertently produced
23 documents or material, and all copies and derivations, within seven (7) business
24 days of the Receiving Party's receipt of a written request for the return of the
25 documents or material. The cost, if any, for excising such documents or materials
26 by the Receiving Party shall be borne by the Producing Party. The Receiving Party
27 having returned the inadvertently produced documents or material may thereafter
28 seek production of the documents or material in accordance with the Federal Rules

1 of Civil Procedure. To the extent that any such inadvertently produced information
2 was used, included, referenced or summarized in a pleading, deposition or other
3 proceeding, in good faith, before a request for the return of the unintentionally
4 produced information, nothing in this paragraph shall require a Receiving Party to
5 purge, redact or excise any such information.

6 **13. INFORMATION NOT COVERED BY THIS ORDER.**

7 The restrictions set forth in this Order shall not apply to information which is
8 in the possession of or otherwise known to the Receiving Party or the public before
9 the date of its transmission to the Receiving Party, or which lawfully comes into
10 the possession of or becomes known to the Receiving Party or lawfully comes into
11 the possession of or otherwise becomes known to the public after the date of its
12 transmission to the Receiving Party, provided that such information does not
13 become publicly known by any act or omission of the Receiving Party which
14 would be in violation of this order.

15 **14. RESPONSIBILITY OF ATTORNEYS.**

16 Outside counsel of record shall be responsible for providing a copy of this
17 Order to all persons entitled access to Designated Material under paragraph 6 and
18 to employ reasonable measures to control duplication of, access to, and distribution
19 of copies of materials so designated. No person shall duplicate any Designated
20 Material except, as contemplated by this Order, for use as exhibits at depositions,
21 in connection with court filings or, as necessary, by counsel, experts or consultants
22 approved under paragraphs 6 and 7 for use as working copies. All copies, extracts
23 and translations must be appropriately marked and are subject to paragraph 15 of
24 this Order.

25 **15. FINAL DISPOSITION.**

26 Upon termination, settlement or final judgment of this litigation including
27 exhaustion of all appeals, the originals and all copies of Designated Material shall
28 be either destroyed or turned over to the Producing Party, or to their respective

1 outside counsel, within sixty (60) calendar days. However, retained counsel may
2 retain pleadings, attorney work product, consultant work product, and deposition
3 transcripts for archival purposes. If Designated Material is destroyed pursuant to
4 this paragraph, outside counsel for the Receiving Party shall provide to outside
5 counsel for the Producing Party a certification identifying when and how the
6 destruction was performed. The provisions of this Order insofar as it restricts the
7 disclosure, communication of, and use of Designated Material produced hereunder
8 shall continue to be binding after the conclusion of this action.

9
10 **16. DISCLOSURE OF DESIGNATED MATERIAL AT TRIAL OR**
11 **PRE-TRIAL HEARINGS.**

12 This Order governs only discovery. At trial or on appeal, the parties will
13 redesignate or redact confidential designations as deemed appropriate.

14 **17. REFERENCE TO THIS ORDER AT TRIAL.**

15 No reference may be made at the trial in this action in the presence of a jury
16 to the existence of this Order or to the effect that certain material is subject to this
17 Order.

18 **18. NO LIMITATION OF OTHER RIGHTS.**

19 This Order shall be without prejudice to the right of any party to oppose
20 production of any information on any and all grounds other than confidentiality.

21 **19. RELEASE FROM OR MODIFICATION OF THIS ORDER.**

22 This Order is entered without prejudice to the right of any party to apply to
23 the Court at any time for additional protection, or to release, rescind, or modify the
24 restrictions of this Order, to determine whether a particular person shall be entitled
25 to receive any particular information or to seek relief from inadvertent disclosure
26 of privileged or work-product information. This Order does not preclude all of the
27 parties to this Order from entering into any stipulation (in writing or on the record)
28 constituting a modification of this Order. On any motion seeking disclosures

beyond those authorized by this Order, the burden will be on the Receiving Party to justify the disclosure.

20. DISCOVERY FROM THIRD PARTIES.

If discovery is sought of a person not a party to this action ("third party") requiring disclosure of such third party's Designated Material, the Designated Material disclosed by any such third party will be accorded the same protection as the parties' Designated Material, and will be subject to the same procedures as those governing disclosure of the parties' Designated Material pursuant to this Order.

21. ADMISSIBILITY.

Nothing herein shall be construed to affect in any way the evidentiary admissibility of any document, testimony, or other matter at any court proceeding related to this matter. The marking of Designated Material as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY INFORMATION pursuant to this Order shall not, for that reason alone, bar its introduction or use at any court proceeding related to this matter pursuant to such terms and conditions as the Court may deem appropriate, consistent with the need for a complete and accurate record of the proceedings; provided, however, that every effort shall be made, through the use of procedures agreed upon by the parties or otherwise, to preserve the confidentiality of Designated Material marked as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY INFORMATION.

22. NON-PARTY REQUEST/SUBPOENA OF DESIGNATED MATERIAL.

If a Receiving Party receives a subpoena or other compulsory process from a non-party to this lawsuit, seeking production or other disclosure of a Producing Party's Designated Material, that Receiving Party shall give written notice to outside counsel of record for the Producing Party within ten (10) calendar days after receipt of the subpoena or other compulsory process identifying the specific

1 Designated Material sought and enclosing a copy of the subpoena or other
2 compulsory process. If the Producing Party timely seeks a protective order, the
3 Receiving Party to whom the subpoena or other compulsory process was issued or
4 served shall not produce the Designated Material requested prior to receiving a
5 Court order or consent of the Producing Party. In the event that Designated
6 Material is produced to the non-party, such material shall be treated as Designated
7 Material pursuant to this Order.

8 **23. UNINTENTIONAL DISCLOSURE OF DESIGNATED**
9 **MATERIAL.**

10 If Designated Material, or any portion thereof, is disclosed by the Receiving
11 Party, through inadvertence or otherwise, to any person or party not authorized
12 under this Protective Order, then the Receiving Party shall use its best efforts to
13 retrieve immediately all copies of such Designated Material, and to bind such
14 person to the terms of this Order. In such event, the Receiving Party shall also (a)
15 promptly inform such person of all the provisions of this Order; (b) identify such
16 person immediately to the Producing Party; and (c) request such person to execute
17 the Acknowledgment of Protective Order in the form shown in Exhibit A.

18 **24. COUNSEL'S RIGHT TO PROVIDE ADVICE.**

19 Nothing in this Order shall bar or otherwise restrict any counsel herein from
20 rendering advice to the counsel's party-client with respect to this action, and in the
21 course thereof, relying upon an examination of Designated Material, provided,
22 however, that in rendering such advice and in otherwise communicating with the
23 party-client, the counsel shall not disclose any Designated Material, nor the source
24 of any Designated Material, to anyone not authorized to receive such Designated
25 Material pursuant to the terms of this Order.

26 **25. NO CONTRACT.**

27 To the extent that the parties have agreed on the terms of this Order, such
28 stipulation is for the Court's consideration and approval as an order. The parties'

1 stipulation shall not be construed to create a contract between the parties or
2 between the parties and their respective counsel.

3 **26. EFFECTIVE DATE.**

4 This Order shall be effective on the date of its execution, provided that all
5 material previously produced shall be deemed ATTORNEYS' EYES ONLY
6 INFORMATION unless and until they are redesignated by the Producing Party or
7 by further order of the Court.

8 **27. TERMINATION.**

9 The termination of this action shall not automatically terminate the
10 effectiveness of this Order and persons subject to this Order shall be bound by the
11 confidentiality obligations of this Order until the Producing Party agrees otherwise
12 in writing or this Court (or any other court or competent jurisdiction) orders
13 otherwise.

14 Respectfully submitted,

15 RUSS, AUGUST & KABAT

16
17 Dated: June 5, 2012

By: /s/ Irene Y. Lee

Larry C. Russ

Irene Y. Lee

Attorneys for Plaintiff and

Counterclaim Defendant Rock Fit, LLC

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21 Dated: June 5, 2012

By: /s/ Michael A. Tomasulo (by permission)

Michael A. Tomasulo

Robert L. Kinder

Attorneys for Defendant and

Counterclaimant J.C. PENNEY

CORPORATION, INC.

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25 IT IS SO ORDERED.

26 Dated: JUNE 6, 2012

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The Honorable Stephen V. Wilson

United States District Judge

CHARLES F. EICK

18 United States Magistrate Judge

RUSS, AUGUST & KABAT

EXHIBIT A

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

I, _____, state that:

I have read and reviewed in its entirety the annexed Protective Order (“Protective Order”) that has been signed and entered in the lawsuit before the United States District Court for the Central District of California, entitled *Rock Fit, LLC v. J.C. Penney Corporation, Inc.*, Case No. CV 11-6377 SVW (Ex).

I understand the terms of the Protective Order, and hereby agree to be bound by and comply with the terms of the Protective Order, and not to disseminate or disclose any information subject to the Protective Order that I review or about which I am told to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.

I understand that contempt sanctions may be entered for violation of this Protective Order and further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the terms of this Protective Order.

I declare under the penalty of perjury under the operating laws that the foregoing is true and correct.

DATED this _____ day of _____, 20__.

(Signature)

(Typed or Printed Name)